

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DR. NICHOLAS ANGELOPOULOS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12-cv-05836
)	
KEYSTONE ORTHOPEDIC SPECIALISTS,)	
S.C., WACHN, LLC, MARTIN R. HALL,)	Hon. Robert M. Dow, Jr.
M.D., IRA K. DUBIN LTD. d/b/a GREEN)	Magistrate Judge Daniel G. Martin
DUBIN & CO., and IRA K. DUBIN,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO AMEND FINAL PRETRIAL ORDER
TO INCLUDE PROPOSED SUPPLEMENTAL AGREED VOIR DIRE
QUESTIONS AND CONTESTED JURY INSTRUCTION**

Defendants KEYSTONE ORTHOPEDIC SPECIALISTS, S.C. (“Keystone”), WACHN, LLC (“WACHN”) and MARTIN R. HALL, M.D., (“Dr. Hall”) (collectively referred to herein as “Defendants”), by and through their attorneys, respectfully submit this Motion to Amend Final Pretrial Order to Include Proposed Supplemental Agreed Voir Dire Questions and Contested Jury Instruction and state as follows:

1. After numerous good faith discussions, the parties submitted the Final Pretrial Order (“PTO”) on April 10, 2017. [Dkt. No. 316.]
2. The PTO included Joint Proposed Voir Dire questions and three sets of proposed final jury instructions: (1) joint agreed jury instructions; (2) jury instructions proposed solely by Plaintiff; and (3) jury instructions proposed solely by Defendants. [Dkt. Nos. 316-11; 316-14; 316-15; 316-16.]
3. The parties worked diligently in preparing the PTO. In the intervening three weeks, the parties have continued their trial preparations.

4. In that time, Defendants noted additional appropriate voir dire questions. These proposed voir dire questions relate to disputes between an employer and employee. These additional proposed voir dire questions are attached hereto as Exhibit A.

5. Defendants also filed Motion *in Limine* #12 [Dkt. No. 350] on Friday, April 28, 2017, which seeks to have Plaintiff's breach of fiduciary duty claim (Count III) decided by the Court, not the jury.

6. Should that Motion *in Limine* #12 be denied (and the jury decides the breach of fiduciary duty claim), then the jury should be instructed that the business judgment rule applies to that cause of action. A draft jury instruction adapted from the Eighth Circuit Court of Appeals' model jury instructions is attached hereto as Exhibit B.

7. Including these voir dire questions and additional jury instruction (in the alternative to Motion *in Limine* #12) supports fundamental fairness in helping to obtain an unbiased jury and instructing the jury properly on the full law applicable to a breach of fiduciary duty claim, respectively.

8. Submitting these supplemental proposed questions and jury instructions three weeks before trial to Plaintiff and this Court causes no harm or prejudice to Plaintiff. In accordance with this Court's standing order, Defendants provided these proposed additions to Plaintiff's counsel on April 28, 2017.

9. Plaintiff agreed to include the two additional proposed voir dire questions.

10. Plaintiff did not agree to the additional jury instruction on the business judgment rule, but did not provide a particular basis for the objection.

11. The additional jury instruction is proper, as the business judgment rule applies to a breach of fiduciary duty claim (should the jury decide that claim).

Meet and Confer Statement Per Paragraph 12(a) of Judge Dow's Standing Order

12. Counsel for Defendants conferred with counsel for Plaintiff on April 28, 2017 and May 1, 2017 via e-mail, and determined that the matter upon which a ruling is sought by way of the supplemental jury instruction is actually in dispute.

WHEREFORE Defendants Keystone, WACHN and Dr. Hall respectfully request that their proposed additional voir dire questions attached hereto as Exhibit A be propounded to the venire in *voir dire* and that, if the Court denies Defendants' Motion *in Limine* #12, the Court also include the proposed jury instruction on the business judgment rule attached hereto as Exhibit B with the instructions regarding breach of a fiduciary duty, that the Final Pretrial Order be amended accordingly, and for all other just relief.

Dated: May 1, 2017

Respectfully submitted,

KEYSTONE ORTHOPEDIC
SPECIALISTS, S.C., WACHN, LLC, and
MARTIN R. HALL, M.D.

/s/ Arthur M. Holtzman

By: _____
One of their Attorneys

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